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4 U.S. DISTRICT COURT
5 EASTERN DISTRICT OF WASHINGTON
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8 Aug 17, 2020
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13 UNITED STATES DISTRICT COURT
14 EASTERN DISTRICT OF WASHINGTON
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17 TERESA P.,

18 Plaintiff,

19 v.

20 ANDREW M. SAUL,
21 COMMISSIONER OF SOCIAL
22 SECURITY

23 Defendant.

24 No. 1:19-CV-03143-JTR

25 ORDER GRANTING PLAINTIFF'S
26 MOTION FOR SUMMARY
27 JUDGMENT AND REMANDING FOR
28 ADDITIONAL PROCEEDINGS

29
30 **BEFORE THE COURT** are cross-motions for summary judgment. ECF
31 No. 15, 16. Attorney Victoria Chhagan represents Teresa P. (Plaintiff); Special
32 Assistant United States Attorney Benjamin Groebner represents the Commissioner
33 of Social Security (Defendant). The parties have consented to proceed before a
34 magistrate judge. ECF No. 6. After reviewing the administrative record and the
35 briefs filed by the parties, the Court **GRANTS** Plaintiff's Motion for Summary
36 Judgment; **DENIES** Defendant's Motion for Summary Judgment; and
37 **REMANDS** the matter to the Commissioner for additional proceedings pursuant to
38 42 U.S.C. § 405(g).

39
40 ORDER GRANTING PLAINTIFF'S MOTION . . . - 1

JURISDICTION

Plaintiff filed applications for Disability Insurance Benefits and Supplemental Security Income on November 12, 2015 and April 22, 2016, respectively, alleging disability since February 1, 2010, due to fibromyalgia, arthritis in her back, PTSD, anxiety, and depression. Tr. 79. The applications were denied initially and upon reconsideration. Tr. 142-48, 150-69. Administrative Law Judge (ALJ) Tom Morris held a hearing on December 8, 2017, Tr. 38-77, and issued an unfavorable decision on June 19, 2018, Tr. 15-32. Plaintiff requested review by the Appeals Council. Tr. 220-21. The Appeals Council denied Plaintiff's request for review on April 16, 2019. Tr. 1-6. The ALJ's June 2018 decision thus became the final decision of the Commissioner, which is appealable to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action for judicial review on June 20, 2019. ECF No. 1.

STATEMENT OF FACTS

Plaintiff was born in 1974 and was 36 years old as of her alleged onset date. Tr. 29. She completed high school and some college coursework. Tr. 40, 561, 783. Her work history consists of housekeeping and waitressing. Tr. 47. She has alleged depression since childhood, due to abuse and sexual assault. Tr. 361, 560, 782. She has experienced wide-spread body pain, diagnosed as fibromyalgia, stemming from various injuries and car accidents. Tr. 336, 806.

STANDARD OF REVIEW

22 The ALJ is responsible for determining credibility, resolving conflicts in
23 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,
24 1039 (9th Cir. 1995). The ALJ’s determinations of law are reviewed *de novo*, with
25 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,
26 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed
27 only if it is not supported by substantial evidence or if it is based on legal error.
28 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is

1 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at
2 1098. Put another way, substantial evidence is such relevant evidence as a
3 reasonable mind might accept as adequate to support a conclusion. *Richardson v.*
4 *Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one
5 rational interpretation, the Court may not substitute its judgment for that of the
6 ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*,
7 169 F.3d 595, 599 (9th Cir. 1999). If substantial evidence supports the
8 administrative findings, or if conflicting evidence supports a finding of either
9 disability or non-disability, the ALJ's determination is conclusive. *Sprague v.*
10 *Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision
11 supported by substantial evidence will be set aside if the proper legal standards
12 were not applied in weighing the evidence and making the decision. *Brawner v.*
13 *Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988).

14 **SEQUENTIAL EVALUATION PROCESS**

15 The Commissioner has established a five-step sequential evaluation process
16 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a),
17 416.920(a); *Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through
18 four, the burden of proof rests upon the claimant to establish a *prima facie* case of
19 entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-1099. This burden is
20 met once a claimant establishes that a physical or mental impairment prevents the
21 claimant from engaging in past relevant work. 20 C.F.R. §§ 404.1520(a)(4),
22 416.920(a)(4). If a claimant cannot perform past relevant work, the ALJ proceeds
23 to step five, and the burden shifts to the Commissioner to show (1) the claimant
24 can make an adjustment to other work; and (2) the claimant can perform specific
25 jobs that exist in the national economy. *Batson v. Commissioner of Social Sec.*
26 *Admin.*, 359 F.3d 1190, 1193-1194 (2004). If a claimant cannot make an
27 adjustment to other work in the national economy, the claimant will be found
28 disabled. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v).

1 ADMINISTRATIVE DECISION

2 On June 19, 2018, the ALJ issued a decision finding Plaintiff was not
3 disabled as defined in the Social Security Act.

4 At step one, the ALJ found Plaintiff had not engaged in substantial gainful
5 activity since the alleged onset date. Tr. 18.

6 At step two, the ALJ determined Plaintiff had the following severe
7 impairments: chronic obstructive pulmonary disease, fibromyalgia, sprains and
8 strains, spine disorders, affective disorders, and anxiety disorders. Tr. 18.

9 At step three, the ALJ found Plaintiff did not have an impairment or
10 combination of impairments that met or medically equaled the severity of one of
11 the listed impairments. Tr. 18-20.

12 The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and found
13 she could perform light exertion level work with the following limitations:

14 lifting or carrying no more than twenty pounds occasionally with
15 frequent lifting or carrying of objects weighing up to ten pounds. The
16 claimant is able to sit for six hours in an eight-hour workday with
17 normal breaks and stand or walk for four hours in an eight-hour
18 workday or have work tasks that permit working with a sit/stand
19 option. She can frequently kneel and climb ramps and stairs, but never
20 climb ladders, ropes, or scaffolds. The claimant is limited to only
21 occasional stooping and crawling. She should avoid concentrated
22 exposure to cold, vibration, fumes, odors, dusts, gases, poor
23 ventilation, and other pulmonary irritants. She should avoid even
24 moderate exposure to hazards, such as dangerous machinery and
25 unprotected heights. The claimant is capable of understanding and
26 recalling short, simple instructions consistent with unskilled work
27 tasks. She can maintain adequate attendance and concentration, pace
28 and persistence for simple routine tasks. There can be frequent contact
with coworkers if it involves a group of five or less people, but there
should be no contact with the general public for work tasks. There can
be occasional changes to the work environment with a day's notice.
The claimant is not able to perform at a production rate pace (e.g.,
assembly line work as where the pace is mechanically controlled) but

1 can perform goal oriented work or where the worker has more control
2 over the pace. She may be off-task up to ten percent of the workday.

Tr. 20-21.

At step four, the ALJ found Plaintiff was unable to perform her past relevant
work as a cleaner/housekeeper or waitress. Tr. 29.

At step five the ALJ found, considering Plaintiff's age, education, work
experience, and residual functional capacity, there were jobs that existed in
significant numbers in the national economy that Plaintiff could perform,
specifically identifying the representative occupations of outside deliverer, coin
machine collector, and document preparer. Tr. 29, 31.

The ALJ thus concluded Plaintiff was not under a disability within the
meaning of the Social Security Act at any time from the alleged onset date through
the date of the decision. Tr. 31.

ISSUES

The question presented is whether substantial evidence supports the ALJ's
decision denying benefits and, if so, whether that decision is based on proper legal
standards.

Plaintiff contends the ALJ erred by (1) improperly rejecting medical opinion
evidence; (2) improperly rejecting Plaintiff's subjective testimony; and (3)
improperly rejecting the lay witness testimony.

DISCUSSION

1. Plaintiff's subjective statements

Plaintiff contends the ALJ erred by improperly rejecting her subjective
statements. ECF No. 15 at 14-18.

It is the province of the ALJ to make credibility determinations. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). However, the ALJ's findings must be supported by specific, cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Once the claimant produces medical evidence of an underlying

1 medical impairment, the ALJ may not discredit testimony as to the severity of an
2 impairment merely because it is unsupported by medical evidence. *Reddick v.*
3 *Chater*, 157 F.3d 715, 722 (9th Cir. 1998). Absent affirmative evidence of
4 malingering, the ALJ's reasons for rejecting the claimant's testimony must be
5 "specific, clear and convincing." *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir.
6 1996); *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1996). "General findings are
7 insufficient: rather the ALJ must identify what testimony is not credible and what
8 evidence undermines the claimant's complaints." *Lester*, 81 F.3d at 834; *Dodrill v.*
9 *Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

10 The ALJ concluded Plaintiff's medically determinable impairments could
11 reasonably be expected to cause the alleged symptoms; however, Plaintiff's
12 statements concerning the intensity, persistence and limiting effects of those
13 symptoms were not entirely consistent with the medical evidence and other
14 evidence in the record. Tr. 22. The ALJ explained that he found the objective
15 findings in the case failed to provide strong support for Plaintiff's allegations. Tr.
16 22-24.

17 An ALJ may cite inconsistencies between a claimant's testimony and the
18 objective medical evidence in discounting the claimant's symptom statements.
19 *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1227 (9th Cir. 2009). But this
20 cannot be the only reason provided by the ALJ. See *Lester*, 81 F.3d at 834 (the ALJ
21 may not discredit the claimant's testimony as to subjective symptoms merely
22 because they are unsupported by objective evidence). "[A]n ALJ does not provide
23 specific, clear, and convincing reasons for rejecting a claimant's testimony by
24 simply reciting the medical evidence in support of his or her residual functional
25 capacity determination." *Brown-Hunter v. Colvin*, 806 F.3d 487, 489 (9th Cir.
26 2015). The ALJ's summary of Plaintiff's treatment over the years does not on its
27 own constitute a clear and convincing basis to discount her allegations of disabling
28 pain and other symptoms.

1 Furthermore, the Court takes note that fibromyalgia is not a condition that
2 generally lends itself to extensive objective findings. *See generally*, Social Security
3 Ruling 12-2p; *Revels v. Berryhill*, 874 F.3d 648, 656-57 (9th Cir. 2017). It is not
4 clear that the normal or unremarkable exam findings identified by the ALJ, such as
5 normal gait, intact sensation, or only mildly reduced strength, have any bearing on
6 the existence or severity of Plaintiff's fibromyalgia, and the ALJ cited to no
7 medical source that indicated as much. As Plaintiff points out in her briefing, no
8 treating medical source indicated that the findings on exam were inconsistent with
9 Plaintiff's allegations. ECF No. 15 at 17.

10 Defendant argues the ALJ also discounted Plaintiff's allegations based on
11 her limited ongoing mental health treatment. ECF No. 16 at 5. The Court finds the
12 ALJ did not clearly link Plaintiff's lack of mental health treatment to his
13 assessment of her reliability. He merely mentioned in the midst of his summary of
14 the treatment evidence and various opinions that "the claimant received limited
15 ongoing mental health treatment" and then summarized the findings showing
16 unremarkable mental status. Tr. 26. Additionally, even if the ALJ did intend to find
17 Plaintiff's allegations to be undermined by her lack of mental health treatment, an
18 ALJ may not find a claimant's statements to be unsupported on this basis without
19 first considering the reasons why she has not sought more treatment. Social
20 Security Ruling 16-3p. The Ruling notes such possibilities as lack of access due to
21 finances, the individual may have found ways to cope by minimizing their
22 activities, having intolerable side effects from treatments, or being advised there is
23 no effective treatment to pursue. *Id.* The record indicates Plaintiff did not have
24 medical coverage at times, or had difficulty getting treatment authorized. Tr. 665,
25 694-95, 893. While it is not clear from the record that lack of access was the reason
26 she did not seek more mental health treatment, it is at minimum a possibility the
27 ALJ needed to consider prior to discrediting her for lack of treatment. The Ninth
28 Circuit has also recognized that "it is a questionable practice to chastise one with a

1 mental impairment for the exercise of poor judgment in seeking rehabilitation.”
 2 *Nguyen v. Chater*, 100 F.3d 1462, 1465 (9th Cir. 1996). Plaintiff indicated that her
 3 depression and anxiety often kept her housebound and interfered with her ability to
 4 interact with others. Tr. 338, 571, 772.

5 As the ALJ did not clearly link Plaintiff’s lack of mental health treatment to
 6 his evaluation of her allegations, and failed to consider any possible explanations
 7 for her lack of treatment, this is not a clear and convincing basis to discount her
 8 subjective statements. A lack of support from the objective evidence alone is an
 9 insufficient basis upon which to discount a claimant’s subjective allegations. Upon
 10 remand, the ALJ will reevaluate Plaintiff’s testimony.

11 **2. Medical Opinion Evidence**

12 Plaintiff asserts the ALJ improperly evaluated the medical opinion evidence
 13 by offering insufficient reasons for rejecting the opinions from Drs. Reinmuth,
 14 Crank, Barnard, and Cline, and Ms. Starr and Ms. Schwarzkopf. ECF No. 15 at 3-
 15 14.

16 When a treating or examining physician’s opinion is contradicted by another
 17 physician, the ALJ is required to provide “specific and legitimate reasons” to reject
 18 the opinion. *Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995); *Lester v.*
 19 *Chater*, 81 F.3d 821, 830-31 (9th Cir. 1995). The specific and legitimate standard
 20 can be met by the ALJ setting out a detailed and thorough summary of the facts
 21 and conflicting clinical evidence, stating his interpretation thereof, and making
 22 findings. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989). The ALJ is
 23 required to do more than offer his conclusions, he “must set forth his
 24 interpretations and explain why they, rather than the doctors’, are correct.” *Embrey*
 25 *v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988).

26 An ALJ may discount the opinion of an “other source,” such as a nurse
 27 practitioner, if he provides “reasons germane to each witness for doing so.” *Molina*
 28 *v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

1 **a. Dr. Reinmuth**

2 Plaintiff's treating doctor, Scott Reinmuth, completed medical source
3 statements about Plaintiff's functional abilities in 2013 and 2017. Tr. 829-30, 899-
4 900.¹ In 2013 he opined Plaintiff was markedly impaired in lifting and carrying
5 based on her fibromyalgia, and was severely impaired in standing, walking, lifting,
6 carrying, and crouching based on her right foot fracture and left ankle pain/possible
7 sprain. Tr. 829. He concluded she was limited to no more than sedentary work for
8 two months. Tr. 800. In 2017 Dr. Reinmuth opined Plaintiff needed to lay down
9 for an hour or more every day for pain relief, and predicted full time work would
10 cause her condition to deteriorate, as she was unable to tolerate even mild activity
11 without worsening symptoms. Tr. 899. He predicted she would miss four or more
12 days of work from a full-time job, due to her reports of being bedridden many
13 days, and being in bed for many hours even on good days. *Id.* He further stated she
14 was severely limited in her exertional capabilities and was unable to meet the
15 demands of even sedentary work on a sustained daily basis. Tr. 900.

16 The ALJ found these opinions to be "excessive in light of the longitudinal
17 treatment history and relying too heavily on the claimant subjective reports." Tr.
18 25. Though he acknowledged fibromyalgia is a condition that generally carries
19 limited objective findings, he found the level of care and clinical findings there
20 were failed to support the extent of the limitations. *Id.*

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¹ The ALJ mistakenly thought the 2017 opinion was completed in 2012, a
24 position Defendant defends. Tr. 25; ECF No. 16 at 9-10. The Court acknowledges
25 Dr. Reinmuth's handwriting is not perfect, but the date is clearly 2017. *Id.*
26 Furthermore, the form was sent to Dr. Reinmuth by Plaintiff's representative,
27 Merit Disability. *Id.* Plaintiff did not retain Merit Disability until 2015. Tr. 141.
28 She also did not begin seeing Dr. Reinmuth until 2013. Tr. 347.

1 Plaintiff argues the ALJ improperly relied on a limited portion of the record
2 and cited no medical authority for his conclusion that the objective findings were
3 insufficient to support the extent of the limits. ECF No. 15 at 3-8. Plaintiff further
4 argues that the ALJ's conclusion regarding the limitations being inconsistent with
5 Plaintiff's own allegations about her daily abilities was flawed, as Dr. Reinmuth
6 was referencing Plaintiff's ability to perform activities on an on-going full-time
7 basis. *Id.* Defendant argues that consistency with the record is a legitimate factor
8 for the ALJ to consider in evaluating the weight due to a medical opinion, and the
9 ALJ reasonably pointed to evidence that does not support the extent of the limits
10 and rationally concluded the doctor relied too heavily on Plaintiff's subjective
11 reports. ECF No. 16 at 7-11.

12 The Court finds the ALJ's analysis to be insufficient. In finding the opinion
13 unsupported, the ALJ failed to explain what kind of treatment or findings were
14 missing. Dr. Reinmuth listed objective findings that supported his opinion,
15 including tenderness and reduced range of motion. Tr. 899. The ALJ did not
16 explain why these findings were insufficient to support the doctor's opinion.

17 An ALJ may consider the nature and duration of the treatment relationship
18 in evaluating the weight to be assigned to an opinion. 20 C.F.R. §§ 404.1527(c),
19 416.927(c). While Dr. Reinmuth had only treated Plaintiff a single time upon
20 completion of the 2013 opinion, Plaintiff had reengaged in services and Dr.
21 Reinmuth had been treating her for a year and a half at the time he completed the
22 2017 opinion. Tr. 871-97. The ALJ did not mention this fact, possibly due to the
23 confusion regarding the date the opinion was completed.

24 If a treating provider's opinions are based "to a large extent" on an
25 applicant's self-reports and not on clinical evidence, and the ALJ finds the
26 applicant not credible, the ALJ may discount the treating provider's opinion.
27 *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir.2008); *see also Bayliss v.*
28 *Barnhart*, 427 F.3d 1211, 1217 (9th Cir. 2005). However, when an opinion is not

more heavily based on a patient's self-reports than on clinical observations, there is no evidentiary basis for rejecting the opinion. *See Ryan v. Comm'r of Soc. Sec.*, 528 F.3d 1194, 1199-1200 (9th Cir. 2008). While Dr. Reinmuth explained that his opinion regarding missed days was based on Plaintiff's report of being bed ridden much of the time, the ALJ did not offer legally sufficient reasons for discounting Plaintiff's subjective reports. *See supra*. The ALJ did not extend this rationale to the remainder of the opinion. There is no evidence that the rest of Dr. Reinmuth's opinion is more heavily based on Plaintiff's self-reports than on their year-and-a-half treatment relationship.

On remand the ALJ will reconsider the evidence provided by Dr. Reinmuth.

b. Dr. Crank

In March 2016, Dr. Jeremiah Crank completed a form for the state Department of Social and Health Services, opining that Plaintiff was severely limited by back pain and fibromyalgia, and was unable to meet the demands of sedentary work. Tr. 792-94.

The ALJ gave this opinion little weight, finding it was inconsistent with Plaintiff's longitudinal treatment records and was unsupported by the physical exam that day, which was the first time Dr. Crank had treated Plaintiff, thus demonstrating that he did not have a longitudinal basis for his opinion. Tr. 25-26.

Plaintiff argues the ALJ did not have a medical basis for finding the exam results to be unsupportive of the opinion and did not show that the opinion was inconsistent with the remainder of the record, similar to the errors with Dr. Reinmuth. ECF No. 15 at 8-10. Plaintiff further argues that, as a treating source, Dr. Crank would have had access to Plaintiff's past medical records to review. *Id.* Defendant argues the ALJ reasonably considered the lack of treatment relationship or objective findings at the single exam in finding the opinion unreliable. ECF No. 16 at 11-13. Defendant further reiterates that the ALJ reasonably interpreted the record as a whole as being inconsistent with Dr. Crank's opinion.

1 An ALJ may reasonably consider the duration and extent of a source's
2 treatment relationship with a claimant in evaluating the reliability of an opinion. 20
3 C.F.R. §§ 404.1527(c), 416.927(c). However, the ALJ was incorrect that the 2016
4 visit was Dr. Crank's first time evaluating Plaintiff. The records from Yakima
5 Neighborhood Health Services show Dr. Crank examining Plaintiff as far back as
6 May 2013. Tr. 694-97. While she met with a variety of providers at this clinic, Dr.
7 Crank had seen her at least four times prior to completing the function report, over
8 the span of three years. Tr. 660-64, 665-68, 680-84, 694-97.

9 The Court finds the same rationale as noted above with respect to Dr.
10 Reinmuth applies to the ALJ's analysis of Dr. Crank. The discussion is not specific
11 enough in terms of how the findings undermine the doctor's conclusions,
12 particularly in the context of fibromyalgia. On remand, the ALJ will reconsider the
13 evidence provided by Dr. Crank.

14 **c. Drs. Barnard and Cline**

15 Plaintiff attended a number of psychological evaluations in connection with
16 her receipt of state benefits. Dr. Barnard examined Plaintiff in 2013 and found she
17 had mild to moderate impairment in work-related functioning. Tr. 566. Dr. Cline
18 evaluated Plaintiff in 2016 and found similar mild and moderate limits, and
19 suggested Plaintiff could be referred to vocational rehabilitation for reentry into the
20 workforce following mental health treatment. Tr. 562-63.

21 The ALJ gave these opinions little weight, noting they were accompanied by
22 mostly unremarkable mental status examinations², were cursory one-time
23 evaluations used for the benefit of the claimant, and were checkbox opinions that
24 did not provide function-by-function assessments of Plaintiff's limitations. Tr. 27.
25

26 ² The ALJ found Dr. Cline's report was cut off and lacking the full mental
27 status examination. Tr. 27. The records from DSHS are out of order, but the rest of
28 the exam is contained in this record at Tr. 569.

1 As this claim is being remanded for further consideration of other evidence
2 and Plaintiff's subjective reports, the ALJ shall also reconsider the psychological
3 evaluations.

4 ***d. Ms. Starr and Ms. Schwarzkopf***

5 The record contains a number of functional assessments completed by non-
6 acceptable sources, including Ms. Starr and Ms. Schwarzkopf, limiting Plaintiff to
7 sedentary or less than sedentary work. Tr. 806-08, 817-18, 821-22. The ALJ found
8 each of these opinions lacking in sufficient clinical findings and based primarily on
9 Plaintiff's subjective complaints. Tr. 26.

10 As this claim is being remanded for further evaluation of other evidence and
11 Plaintiff's subjective reports, the ALJ will also reconsider the opinions from the
12 non-acceptable sources.

13 **3. Lay witness evidence**

14 Plaintiff's friend James Hale completed a third-party function report in 2016,
15 noting Plaintiff's difficulty with extended periods of activity, her tendency to stay
16 in bed much of the day, and her difficulties with handling stress and paying
17 attention. Tr. 269-75.

18 The ALJ gave this opinion "some weight" noting Mr. Hale did not have any
19 medical training and was not a disinterested third-party, and that his statements
20 were "primarily observations of the claimant's ability to function, rather than
21 opinions as to the claimant's maximum functional capabilities." Tr. 22.

22 Plaintiff argues the fact that Mr. Hale does not have medical training is
23 precisely what makes him a third party, and his relationship with Plaintiff is what
24 gives him knowledge of how she functions, noting that the rules concerning third-
25 parties anticipate precisely this kind of situation, and self-interest is only a relevant
26 factor if there is some evidence that the witness exaggerated in order to benefit
27 from the claimant's award. ECF 15 at 18-19. Defendant argues that any error in the
28 ALJ's analysis is harmless as the ALJ gave adequate reasons for rejecting similar

1 evidence from Plaintiff and the third party was contradicted by more reliable
 2 medical evidence that the ALJ credited. ECF No. 16 at 6-7.

3 Lay witness testimony is “competent evidence” as to “how an impairment
 4 affects [a claimant’s] ability to work.” *Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d
 5 1050, 1053 (9th Cir. 2006); *see also Dodrill v. Shalala*, 12 F.3d 915, 918-19 (9th
 6 Cir. 1993) (“[F]riends and family members in a position to observe a claimant’s
 7 symptoms and daily activities are competent to testify as to her condition.”). An
 8 ALJ must give “germane” reasons to discount evidence from these “other sources.”
 9 *Dodrill*, 12 F.3d at 919.

10 The Court finds the ALJ failed to point to any germane reasons for
 11 discounting Mr. Hale’s testimony. His lack of medical training and his friendship
 12 with Plaintiff are precisely what make him a third-party qualified to provide
 13 supportive testimony regarding her functioning. There is no evidence that he
 14 exaggerated his statements in order to benefit from them. *Valentine v. Comm’r of*
 15 *Soc. Sec. Admin.*, 574 F.3d 685, 694 (9th Cir. 2009). The error is not harmless, as
 16 the ALJ failed to offer legally sufficient reasons for discounting Plaintiff’s similar
 17 assertions and erred in the evaluation of the medical evidence. *Molina v. Astrue*,
 18 674 F.3d 1104, 1122 (9th Cir. 2012).

19 On remand the ALJ will reconsider the third-party evidence along with the
 20 rest of the record.

21 CONCLUSION

22 The ALJ’s RFC determination is not supported by substantial evidence and
 23 must be reevaluated. On remand, the ALJ shall reevaluate the medical evidence,
 24 Plaintiff’s subjective complaints, and the third-party evidence, and make new
 25 findings on each of the five steps in the sequential process, taking into
 26 consideration any other evidence or testimony relevant to Plaintiff’s disability
 27 claim.

28 Accordingly, **IT IS ORDERED:**

1. Plaintiff's Motion for Summary Judgment, ECF No. 15, is
GRANTED.

2. Defendant's Motion for Summary Judgment, ECF No. 16, is
DENIED.

3. The matter is **REMANDED** to the Commissioner for additional proceedings consistent with this Order.

4. An application for attorney fees may be filed by separate motion.

The District Court Executive is directed to file this Order and provide a copy to counsel for Plaintiff and Defendant. Judgment shall be entered for Plaintiff and the file shall be **CLOSED**.

IT IS SO ORDERED.

DATED August 17, 2020.



M

JOHN T. RODGERS
UNITED STATES MAGISTRATE JUDGE